IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1261 OF 2005
IN
SUIT NO.3541 OF 1988

Norman E. Frederick & Anr. ....Plaintiffs
V/s.
Johnson R. Menezes & Ors. ....Defendants
And
M/s.Norvicson Advertising ....Applicants

Mr.C.N. Chavan for the Applicants.
Mr.G.V. D'Lima for Defendant Nos.1 and 2.

CORAM : S.J. VAZIFDAR, J.
DATED : 9TH JANUARY, 2006.

P.C. :

1. This Chamber Summons is taken out by the Applicants to be brought on record as the Plaintiff in place of the existing two Plaintiffs.

2. The suit was filed on 22nd December, 1988 by the original Plaintiff inter-alia for a declaration that he was in possession of the suit premises ; that the Defendants are tres-passers in respect of the suit premises ; for a decree of possession and for a permanent injunction restraining the Defendants from remaining in the suit premises.

3. The suit was filed by the original Plaintiff in his individual capacity. The original Plaintiff expired on 17th July, 1996. Thereupon his wife and son were impleaded in his place as Plaintiff Nos.1-a and 1-b respectively pursuant to an order dated 29th November, 1996.

4. It was submitted on behalf of the Applicants that they should be impleaded as the Plaintiffs and that Plaintiff Nos.1-a and 1-b should be removed as the Plaintiffs.

5. The Chamber Summons is unsustainable. The Applicants' case is that the possession of the original Plaintiff was on behalf of the Applicants' partnership firm. When the leave and licence agreement was entered into, it appears that there was a firm with the same name viz. M/s.Norvicson Advertising. There were three partners of the partnership firm including the original Plaintiff. One of the partners, Sundar Suvarna, expired on 26th September, 1996. The third partner Victor Fernandez retired on 1st July, 1988. The firm thus stood dissolved as only a single partner was left. It is alleged that in 1996, the original Plaintiff had inducted two partners who now constituted the

Applicants firm. That however is a different partnership firm altogether. The mere retention of the name would make no difference.

6. In any event if according to the Applicants they have any right in respect of the suit premises, it is for them to file independent proceedings to establish the same. It is important to note that the entire plaint proceeds on the basis that the original Plaintiff was exercising his rights in his individual capacity and not on behalf of the firm. Further even assuming it was on behalf of the erstwhile firm the right could only be exercised by the partners of the erstwhile firm and/or their heirs/successors and not by the present Applicants who admittedly constituted a new and independent firm after the deemed dissolution of the erstwhile firm.

7. In the circumstances, the Chamber Summons is dismissed. The Applicants shall pay the costs fixed at Rs.5000/- to the Plaintiff within four weeks from today.